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The Honorable William H. Alsup  
Judge of the United States District Court  
Northern District of California  
450 Golden Gate Ave., Courtroom 8, 19th Floor  
San Francisco, CA 94102

Re: *Oracle America, Inc. v. Google, Inc.*, Case No. 3:10-cv-03561-WHA

Dear Judge Alsup:

Oracle respectfully requests leave to file a motion pursuant to Civil L.R. 7-3(d) to supplement its evidence in support of Oracle's Opposition to Google's Motion for Summary Judgment on Copyright (Dkt. No. 339) with excerpts from the deposition transcript of Google's copyright expert, Dr. Owen Astrachan, taken September 9, 2011. Alternatively, Oracle requests leave to simply file the above transcript excerpts. The parties' scheduled depositions of their respective copyright experts took place after briefs on the summary judgment motion were due, so Oracle could not have submitted this evidence earlier.

Google's motion contends that designing APIs is "the very antithesis of creative expression." (Google Reply Brief at 4:2-3). At his deposition, however, Dr. Astrachan acknowledged that designing APIs requires skill and creativity:

[REDACTED]

REDACTED PUBLIC VERSION

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[REDACTED]

Astrachan Dep. Tr. at 128:23-129:14. *See also id.* at 223:5-25 (acknowledging that designing the APIs at issue [REDACTED] and that the design process involves [REDACTED])

Dr. Astrachan further acknowledged the skill writing good APIs requires:

[REDACTED]

*Id.* at 126:21-127:5. Dr. Astrachan added: [REDACTED]  
[REDACTED]  
[REDACTED] *Id.*  
at 128:9-13.

Dr. Astrachan however, discounts this creativity because he contends that despite their [REDACTED] between these

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elements, the APIs are simply [REDACTED] *Id.* at 241:18-242:21. He also tried to discount this creativity at his deposition, by claiming, contrary to the definitions for “API” he provided in his expert report that the APIs are purely abstract and are not expressed in either the specifications of the software. *Compare id. with* Astrachan Astrachan Decl. Ex. 1 at ¶ 24 n.1 (citing *Newton’s Telecom Dictionary’s* definition of an API as “[s]oftware that an application program uses to request and carry out lower-level services performed by the computer’s . . . operating system.”)

Dr. Astrachan’s testimony also sheds light on the issue of compatibility that Google has raised with the Court. When asked whether Google could have written its own APIs for the 37 packages at issue in this case, Dr. Astrachan replied: [REDACTED]

[REDACTED] *Id.* 253:2-4. The design goals to which Dr. Astrachan referred were [REDACTED]  
[REDACTED] *Id.* 251:21-24.

So that the Court may better consider the above, Oracle requests leave to file excerpts from Dr. Astrachan’s deposition transcript in support of its opposition to Google’s motion.

Respectfully submitted,

/s/ Michael A. Jacobs

Michael A. Jacobs

cc: Counsel for Google, Inc.